

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

GORDON D. SONDLAND,)	
)	
)	
Plaintiff,)	
)	No. 21-2083C
v.)	(Judge Sweeney)
)	
UNITED STATES,)	
)	
Defendant)	

**DEFENDANT’S UNOPPOSED MOTION TO EXTEND
DOCUMENT PRODUCTION DEADLINE FOR WHITE HOUSE DOCUMENTS**

Defendant, the United States, respectfully requests that the Court extend the document production deadline for one category of documents requested by plaintiff – those under control of the White House – by 90 days, until March 2, 2023. This is our second request for an extension of a discovery deadline, although our first concerning our response to these specific document requests. The current deadline for production of documents is December 2, 2022, pursuant to the Court’s October 12, 2022 order (ECF No. 38). We have discussed the matter with Ambassador Sondland’s counsel, who has informed us that he does not oppose this motion.

Defendant has expended significant effort in responding to requests for documents and to our knowledge there are no issues concerning our responses. Accordingly, we expect to meet this deadline for all responsive, non-privileged documents in the possession, custody and control of the Department of State, the agency whose alleged actions are principally at issue. At issue is a request that we produce documents related to allegations concerning the actions of unnamed White House personnel. We have determined that the request might implicate then-members of the White House staff, and any such documents would be under the custody or control of the White House. We are not, however, in a position to simply contact the White House and instead

must coordinate with higher levels within the Department of Justice, which involves various levels of review.

Because of our inability to predict with any certainty when that process might conclude, or, of course, the relevant White House officials' own schedules, we seek a three-month extension out of an abundance of caution. Of course, if we receive any such documents sooner, we will inform Ambassador Sondland's counsel. In any event, we do not believe the limited extension to the document production deadline that we request will affect any other scheduled deadlines or the overall progress of discovery in this matter.

ARGUMENT

In his amended complaint, Ambassador Sondland alleges that, in October 2019, former Secretary of State Mike Pompeo entered into a contract with Ambassador Sondland, pursuant to which the Government would reimburse Ambassador Sondland for private counsel fees and expenses he incurred in connection with his testimony to Congress regarding the impeachment of President Trump. Am. Compl. ¶¶ 2, 6, 22, 28. Ambassador Sondland also alleges that other State Department personnel made similar promises of reimbursement. Am. Compl. ¶¶ 28, 43, 44 .

Since discovery deadlines were extended by the Court's order of October 12, 2022 (ECF No. 38), we have been working steadily to complete our collection and review of potentially responsive documents in the possession, custody and control of the Department of State, as well as to complete the significant privilege review that was necessitated by the fact that a substantial majority of the responsive State Department documents were generated by lawyers. We expect to meet the December 2, 2022 deadline for production of all documents in the possession,

custody and control of the State Department.

In addition, Ambassador Sondland's amended complaint makes several references to unnamed White House personnel, Am. Compl. ¶¶ 17, 22, 27, and his document request seeks documents related to those references. Based on positions Ambassador Sondland has taken in this litigation, White House documents are, at best, tangential to the issue in this case.

Ambassador Sondland's allegations do not assert that any White House personnel entered into or witnessed the alleged agreement at issue. *See* Am. Compl. ¶¶ 17, 22, 27. Nor do Ambassador Sondland's initial disclosures list any White House personnel as persons likely to have discoverable information that Ambassador Sondland may use to support his claims. Indeed, the focus of Ambassador Sondland's allegations also establishes that the overwhelming majority of responsive documents, if not all of them, will be from Department of State personnel.

Nonetheless, we have been working diligently to obtain whatever potentially responsive documents may exist that are in the possession of White House personnel. Given the complexity of the relationship between the White House and the Department of Justice, however, we are constrained by DOJ's internal procedure for seeking documents from the White House, which require several layers of review and remain in progress as of the date of this motion. Accordingly, we do not yet have in our possession any potentially responsive White House documents, and thus we will not be able to produce any such documents by the December 2, 2022 deadline. We also cannot predict with any certainty how long either DOJ or White House review might require, but based on a conservative estimate of the time required to conclude the required reviews, and to obtain, review, and produce any responsive documents therefore, we request this three-month extension. Of course, if we learn there are no responsive documents or

obtain them sooner, we will inform plaintiff's counsel.

CONCLUSION

For the foregoing reasons, we request that the Court grant this motion to enlarge the document production deadline for responding to plaintiff's request for documents from the White House, from December 2, 2022 to March 2, 2022.

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